IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 2ND JUNE 2006 / 12TH JYAISHTA, 1928

WP(C).No. 20094 of 2003(P)

PETITIONER:

SAHITHYA PRAVARTHAKA CO-OPERATIVE SOCIETY LTD.NO.2458, KOTTAYAM, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.V.SURENDRANATH
SMT.BINDUMOL JOSEPH

RESPONDENTS:

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1. P.K.THOMAS, KOTTARAPARAMBIL MEENADOM POST, MADHUPADDY, KOTTAYAM.

2. K.M.CHANDRASEKHARAN NAIR, MULAKKAL HOUSE, PARAMPUZHA POST, KOTTAYAM.

3. LABOUR COURT, ERNAKULAM.

4. THE DISTRICT LABOUR OFFICER, KOTTAYAM.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/06/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the claim petition submitted by the respondents 1 and 2.

Ext.P2: A true copy of written statement filed by the petitioner, the opposite party in CP 11/88.

Ext.P3: A true copy of the order in CP.46/99 passed by the 3rd respondent on 15-2-2003.

Ext.P4: True copy of the show cause notice dated 27-5-2003 issued by the 4th respondent.

Ext.P5: True copy of the petition dated 13-6-2003 submitted by the petitioner before the 4th respondent.

RESPONDENT'S EXHIBITS:

Ext.R1(a): True copy of the order dated 20-12-1982 passed by the Labour Court, Ernakulam in C.P.No.54 of 1980.

Ext.R1(b): True copy of the judgment dated 26.6.86 in O.P.No.3182 of 1983 of this Hon'ble court.

Ext.R1(c): True copy of the order dated 5.9.89 passed by the Labour Court, Ernakulam in C.P.No.11 of 1988.

Ext.R1(d): True copy of judgment dated 31.8.95 in O.P.No.103 of 1990-K of this Honourable Court.

Ext.R1(e): True copy of judgment dated 14-8-1998 in W.A.No.1464 of 1995 of this Honourable Court.

Ext.R1(f): True copy of rejoinder filed by respondent nos.1 and 2 in C.P.No.46 of 1999 on the file of the Labour Court, Ernakulam.

// True copy//

P.A. to Judge

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A.K.BASHEER, J.

W.P.(C)No.20094 of 2003 (P)

JUDGMENT

Dated 2nd June 2006

A.K.BASHEER.J.

W.P.(C)No.20094 OF 2003

Dated this the 2nd day of June 2006

JUDGMENT

Is Ext.P3 order passed by the Labour Court under Section 33C(2) of the Industrial Disputes Act legally valid and sustainable? A brief reference to the essential facts is necessary to consider the above question.

2. Petitioner-Society was the first of its kind in the co-operative sector founded by famous littérateurs like Vaikom Muhammed Basheer, S.K.Pottakkad, Thakazhi, etc. with the avowed object of publishing literary works of its own members to encourage the literary talents among the budding writers. The society had been running a press known as India Press under it. Respondents 1 and 2 who had retired from the service of the press in March and February 1998 respectively, filed an application under Section 33C(2) of the Act before the Labour Court, Ernakulam claiming amounts under the heads of grade increments, annual increments, arrears of D.A., fixation, surrender of earned leave etc. for various periods from 1981 till 1988. It was contended by the respondents/claimants that in C.P.No.54/1980,

the Labour Court by its order dated December 20, 1982, had allowed the above claims for the period upto 1980. The amounts awarded by the Labour Court were paid by the society. Thereafter petitioner No.1 and three others had yet again filed C.P.No.11/1988 for the dues payable for the period upto 1988 in terms of the order in C.P.No.54/1980. This claim was also allowed by the Labour Court. The said order was later confirmed by the Division Bench of this court. It was further contended by the petitioners that the society had nevertheless refused to pay the above mentioned dues which were capable of being computed in terms of money as provided under Section 33C(2) of the Act. Ext.P1 is the true photocopy of the claim petition filed by the petitioners before the Labour Court.

3. In the written statement the society contended that the claim made by the petitioners was totally unsustainable since it had become stale and therefore barred by limitation. Moreover, respondent No.2 was not entitled to claim any benefits in terms of the order in C.P.No.11/1988 since he was not a party to the said proceeding. It was further contended that all benefits consequent

to the grade promotion with effect from January 1981 were paid to all the employees including respondents 1 and 2. As regards the claim based on fixation of pay it was contended that the claims were settled long back after holding discussions with the employees. The other contention was that respondents 1 and 2 were entitled only to the benefits of casual leave, leave with wages etc. and that they were not entitled to claim the benefits of leave surrender. In short, the society had disputed the sustainability of the claim made by respondents 1 and 2 in its entirety. The Labour Court on an evaluation of the oral and documentary evidence on record, which consisted of the testimonies of the respondents/claimants as PWs1 and 2 and also Exts.P1 to P5 on their side and the oral testimony of DW1 on the side of the society, held that respondent 1 was entitled to realise a sum of Rs.59,465/- from the society with 12% interest thereon from the date of petition. Similarly, the society was directed to pay a sum of Rs.96,701/- with 12% interest to respondent No.2 also. A copy of the above order which is on record as Ext.P3 has been challenged by the society in this writ petition.

4. Learned counsel for the petitioner-society submits that Ext.P3 order is totally illegal and unsustainable. The Labour court has committed serious irregularity in allowing the stale claims made by the two former employees who had admittedly retired from service long before the institution of the claim petition. The labour court has passed the order purportedly under Section 33C (2) of the Act which could not have been done for reasons more than one. It is also contended by the learned counsel that the scope and ambit of Section 33C(2) of the Act have been totally overlooked by the court below.

5. On the contrary, learned counsel for respondents 1 and 2 have stoutly justified and defended the order passed by the Labour Court. It is contended that the petitioner society can not be absolved of its liability to pay the legitimate dues to its workmen particulary in view of the two earlier orders passed by the Labour Court (C.P.No.54/1980, 11/1988).

6. In this context, it is necessary to refer to the claims made by respondents 1 and 2 in Ext.P1 claim petition. Respondent No.1 claimed a sum of Rs.9,462/- towards grade promotion (from

January 1981 to January 1998). He claimed a sum of Rs.2,070/- being annual increment due from January 1996 till March 1998. The other benefit claimed by respondent 1 related to arrears of fixation of pay as ordered in C.P.54/1980. He claimed Rs.7,056/- for the period from April 1, 1988 till March 31, 1998. The other claim made by respondent 1 pertains to wages for three months and ten days at the rate of Rs.4,544 which was his last drawn salary. According to respondent 1, the above sum became due since wages for the period mentioned above was unlawfully recovered from him due to non-sanctioning of leave which he was otherwise entitled to avail. He claimed Rs.15,146/- under the above head. The next claim made by respondent 1 was under the head of balance of earned leave calculated at 13 days per year for 10 years. He claimed Rs.19,361/- under the above head. The common case of respondents 1 and 2 as regards arrears of D.A. was that they were paid D.A. at the rate of 104% only which was effective from January 1, 1994. At the time of their retirement they were eligible to get D.A. at the rate of 189%. Thus they claimed the balance 85% of D.A. from July 1, 1994 till the date of

their retirement. Respondent claimed a sum of Rs.32,160/- as D.A. arrears. Thus a total sum of Rs.85,255/- was claimed by respondent 1.

7. The claims made by respondent No.2 were under two heads:

a) balance of earned leave calculated at the rate of 13 days per year for 18 years = Rs.51,737/-

b) arrears of balance D.A. at 85% outstanding from 1-7-1994 to 28-2-1998 = Rs.44,964/-

Thus respondent No.2 claimed a total sum of Rs.96,701/-.

8. It is the admitted position that in C.P.No.54/1980, petitioners and ten others were awarded certain benefits like fixation of D.A. and 'surrender of leave salary' for certain periods during 1978-1979. A copy of the order passed by the Labour Court in C.P.54/1980 has been produced as Ext.R1(a), in which claimant Nos.1 and 9 are respondents 1 and 2 in this writ petition. In Ext.R1(a) order the Labour Court held that the pay fixation was not properly made and that the claimants were entitled to D.A. at the enhanced rate for the relevant period. It was also held that the claimants were entitled to the benefits of leave surrender salary

for the period in question.

9. It is also beyond dispute that respondent No.1 and two others had filed C.P.11/1988 before the labour court and claimed certain benefits in terms of the order in C.P.No.54/1980 for the period upto March 1988. It is contended by respondent No.1 that the claim was allowed by the Labour Court.

10. It is significant to note that respondent 1 had raised a claim that he was entitled to get two increments which fell due on January 1, 1981 and January 1, 1996. Since the said two increments were not granted to him, he claimed a sum of Rs.9,462/- for 18 years and Rs.2070/- for 3 years at the respective rates applicable. He also claimed benefits of salary fixation in the light of the two orders passed by the Labour Court earlier. Respondents 1 and 2 had also claimed balance of earned leave at the rate of 13 days per year for 10 years and 18 years respectively, apart from 8 instalments of D.A. arrears at the rate of 85% over and above the 104% D.A. paid to them at the time of retirement.

11. As rightly pointed out by learned counsel for the society, respondent No.1 had no case till his retirement that the annual

increment which fell due in 1981 was denied to him. Such a claim was never made by respondent No.1 in C.P.No.11/1988. As regards the claim for fixation of salary for the periods starting from 1988 till the date of retirement, it is contended by the learned counsel that such a claim by a retired workman could not have been entertained by the Labour Court under Section 33C(2).

12. I have referred to the above aspects of the claim rather too elaborately with a view to consider the question whether the claims made by respondents 1 and 2 were in fact strictly in terms of the earlier orders passed in the proceedings mentioned above. Apparently they were not. It may be true that in C.P.No.54/1980 respondents 1 and 2 and some other workmen were granted the benefits of fixation of pay and D.A. for a short period during 1978-1979. Similarly, the workers were also given the benefit of surrender of leave salary for the relevant period. But as rightly pointed out by learned counsel for the society the claims made by respondent 1 and 2 in Ext.P1 petition before the Labour Court were not based on the benefits given to the workmen by the Labour Court in the two earlier claim petitions. As noticed

already, respondent No.1 claimed balance of earned leave benefits for 10 years while respondent No.2 claimed it for 18 years. It is also pertinent to note that respondent No.2 was not a party to C.P.No.11/1988. Obviously respondent No.2 had not raised any claim for those benefits after 1980. There is no explanation at all as to why he had kept quiet. It is also pertinent to note in this context that respondent No.2 had retired as manager. There is no clue as to when he became the manager. This crucial aspect was not considered by the Labour Court at all.

13. As regards the claims made by respondent No.1 but also there is no explanation why he had kept quiet after 1988. Having regard to the entire facts and circumstances and particularly in the absence of any explanation for the delay, I have no hesitation to hold that the Labour Court had passed Ext.P3 order in a very casual and mechanical manner, proceeding as though the claims made in Ext.P1 application were in continuation of the orders passed in the two earlier claim petitions.

14. There is yet another aspect of the matter. As rightly pointed out by learned counsel for the society, respondents 1 and

2 would not come within the purview of “workman” as defined under Section 2(s) of the Act since they had admittedly retired from service long prior to initiating the above proceedings under Section 33C(2) of the Act. Section 2(s) defines the term “workman” as any person employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward and for the purpose of any proceeding under the Industrial Disputes Act in relation to an industrial dispute and also includes any such person who has been dismissed, discharged or retrenched in connection with or as consequence of, that dispute. Learned counsel has invited my attention to the decisions of this court in **Sukumaran v. H.M.T. Limited [1999 (1) KLT Short Note No. 10]; Everestee v. District Labour Officer [1999 (2) KLT 560] and Purandaran v. Hindustan Lever Limited [2001 (1) KLT 867].** In the above decisions it has been held that a retired workman would not come within the ambit of “workman” as defined in Section 2(s) of the Act and therefore the claim made by such a retired workman can not be entertained by the Labour Court.

15. However learned counsel for respondents 1 and 2 placing reliance on a decision of the Supreme Court in **National Buildings Construction Corporation Limited v. Pritham Singh Gill and others [AIR 1972 SC 1579]** contends that Section 33C(2) can be invoked in respect of claims for salary and other benefits payable to the workman if these benefits were in relation to a period prior to the date of his dismissal. There can be no dispute that a dismissed, discharged or retrenched workman will come within the purview of the definition in Section 2(s) of the Act. In the decision relied on by the learned counsel the claim under Section 33C(2) was made by a dismissed workman in respect of benefits and salary due to him for the period prior to the date of his dismissal. Obviously therefore the above decision could not lend any support to the case of respondents 1 and 2.

16. Learned counsel for respondents 1 and 2 has relied on yet another decision of the Supreme Court in **Sohan Singh and others v. General Manager, Ordnance Factory and others [1984 (supp) SCC 661]**. In this decision, it was held by their lordships that it was not open to the respondents to challenge the

competence or jurisdiction of the labour court to try the relevant issue for the first time before the High Court after having submitted to its jurisdiction already. The above decision also may not be of any assistance to respondents 1 and 2 since a perusal of the written statement undoubtedly shows that the petitioner society had disputed the sustainability of the claim made by respondents 1 and 2. It may be true that no specific reference was made to Section 33C(2) of the Act in the written statement. But a careful perusal of the various contentions raised by the society in the written statement unambiguously shows that the jurisdiction and competence of the labour court to entertain the claim made by respondents 1 and 2 was disputed. The society had specifically contended that the claims made by respondents 1 and 2 were not only barred by limitation but they were not sustainable legally or factually for the reasons stated by it in the written statement in detail. But while dealing with the issue as to whether the petition was maintainable in view of the contentions raised by the petitioner society, the Labour Court had not adverted to the question whether the claim was sustainable under Section 33C(2)

of the Act. Obviously, the impact of Section 2(s) as regards the retired workmen was also not considered by the Labour Court. In that view of the matter, I have no hesitation to hold that the petitioner society is entitled to raise the question of maintainability of the application filed by respondents 1 and 2 under Section 33C (2) of the Act before this court.

Having regard to the entire facts and circumstances, I have no hesitation to hold that Ext.P3 order passed by the labour court is liable to be set aside. I do so. The writ petition is accordingly allowed.

A.K.BASHEER, JUDGE

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